IN THE HIGH COURT OF DELHI AT NEW DELHI

C.R.P. No.193/2005

Sh. Deep Chand ..... Petitioner
! through: Mr. Madan Lal Sharma, Adv.

VERSUS

$ Sh. Kulanand Lakhera & Ors. ..... Respondent
^ through: Mr. D.K.Mishra, Adv. for R-1

C.R.P. No.21/2002

Sh. Harbir Singh ..... Petitioner
! through: Mr. Rajender Dutta, Adv.

VERSUS

$ Delhi Development Authority ..... Respondent
^ through: Ms. Sangeeta Chandra, Adv.

C.R.P. No.593/2003

Sh. Om Singh & Ors. ..... Petitioner
! through: Mr. S.K.Puri, Sr. Adv. with
Ms. Mahjabeen Shamim, Adv.

VERSUS

$ Municipal Corporation of Delhi ..... Respondent
^ through: Mr. Vijay Sharma, Adv. for
Mr. Dev Bhardwaj, Adv.

C.R.P. No.698/2003

Sh. Yogesh Kumar Hans & Anr. ..... Petitioner
! through: Mr. J.C.Mahindroo, Adv.

VERSUS

$ Sh. Bishambar & Ors. ..... Respondent
^ through: Mr. Ram Kishan Saini, Adv. for R1 to R6

% **D**ATE OF DECISION: 17-04-2007

CORAM:
* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y
2. To be referred to the Reporter or not? Y

3. Whether judgment should be reported in Digest? Y

: PRADEEP NANDRAJOG, J.

1. Dealing with possession, in Chapter 9, Salmond On Jurisprudence (12th Edition), states that few relationships are as vital to man as that of possession, and we may expect any system of law, however primitive, to provide rules for its protection. Possession of material things is essential to life, it is the most basic relationship between men and things.

2. Elaborating the concept of possession, at page 266, the learned author has opined:-

> "But the concept of possession is as difficult to define as it is essential to protect. In the first place, possession is an abstract notion and involves the same sort of difficulties, which we have seen to arise with other abstract terms such as "law" and "rule". There is nothing which we can point at and identify as possession in the same way as we can do with concrete things such as tables and chairs. Moreover, it is an abstract term to which the traditional type of definition is as inappropriate as we saw it to be for the term "rule". Just as we could not locate the notion of a rule within some wider class of concepts, so too with possession we cannot define it by placing it in a wider class and then distinguishing it from other members of the class; for possession is, it would seem, is a class of its own.
>
> A second cause of difficulty is the fact that possession is not purely a legal concept. Our discussion of ownership showed that possession differs from ownership in that the former is of temporary duration whereas the latter is of a more permanent, ultimate and residuary nature. But possession differs from ownership in another quite different respect. Ownership, as we saw, consists of a combination of legal rights, some or all of which may be present in any particular instance; and such rights imply the existence of legal rules and a system of law. With possession this is not so. A possessor is not so much one who has certain rights as one who actually has possession. Whether a person has ownership depends on rules of law; whether he has possession is a question that could be answered as a matter of fact and without reference to law at all. The notion of possession has application in a pre-legal society, and even perhaps outside society altogether. Of course in so far as statements about possession are statements of law, then they imply the existence of that law, but the existence of possession is independent of, and prior to, that of law. Whereas ownership is strictly a legal

> concept, possession is both a legal and a non-legal or pre-legal concept."

3. At page 274, the learned author has opined that in a civilized society some protection of possession is essential. There are two methods of protecting the possession. Firstly, the possessor can be given certain legal rights, such as a right to continue in possession free from interference by others. Secondly, the law can protect possession by prescribing criminal penalties for wrongful interference and wrongful dispossession.

4. In relation to the former i.e. the first method by which law can protect possession, the learned author opines that the possessory right *in rem* can be supported by various sanctioning rights in *personam* against those who violate the possessor's right: he can be given a right to recover compensation for interference and for dispossession, and a right to have his possession restored to him.

5. The learned author goes on to explain that whenever such remedies are invoked, it will be important to ascertain whether a person invoking them actually has any possession to be protected. Consequently, a legal criteria has to be evolved to determine whether a person is in possession of an object.

6. But, legal concept of possession is not restricted to the commonsense concept of possession, namely physical control. Possession in fact is not a simple notion. The question whether in fact a person is in possession of an article depends on various factors such as the nature of the article itself and the attitudes and activities of other persons.

7. Possession may be lawful, it may be unlawful. It may be legal or illegal. The acquisition of legal possession would obviously be lawful and would of necessity involve the occurrence of some

event recognized by law whereby the subject matter falls under the control of the possessor. But a problem arises where the duration for which possession is recognized is limited by the grantor or the law. Continuance of possession beyond the period specified by the grantor or recognized by law is not treated as a lawful possession. For example, a tenant acquires legal as well as lawful possession of the tenanted premises from the landlord with the express consent of the landlord but limited to the duration of the lease. On expiry of the lease, if the landlord does not consent to the lease being continued, the possession of such tenant would not be a lawful possession. The nature of possession being not lawful would entitle the landlord to regain possession.

8. Can he do so by entering upon the tenanted premises and physically throwing out the tenant?

9. From a commonsense point of view, lawful possession must be the state of being a possessor in the eyes of law. The possession must be warranted or authorized by the law; having the qualifications prescribed by law and not contrary to nor forbidden by the law.

10. But law recognizes possession as a substantive right or an interest. Continued possession of a person is recognized by law as a sufficient interest capable of being protected by the possessor, right being founded on mere fact of possession.

11. This concept of law relating to possession has been a source of fertile litigation and if I may use the expression, a lawyer's delight and a Judge's despair.

12. Salmond On Jurisprudence (12th Edition), page 294, while discussing possessory remedies has noted that in English law, possession is a good title of right against anyone who cannot show a

better title. Thus, a possessor, including a wrongful possessor, has the rights of an owner with respect to all persons except the true owner. Many legal systems go much further and treat possession as a provisional or temporary title even against the true owner. A wrongdoer who is deprived of his possession can recover it from any person whatsoever, simply on the ground of his possession and where the true owner uses force to throw out the wrongdoer, these legal systems do not permit the true owner to set up his superior title to protect the possession which was regained by force. He is compelled to give up possession and then proceed in due course of law for the recovery of the thing on the strength of his ownership.

13. In the latter legal systems, the intention of the law is that every possessor shall be entitled to retain and recover his possession until deprived of it by an action according to law.

14. Legal remedies for protection of possession even against ownership are called *possessory*. Legal remedies for protection of possession or regaining possession based on ownership (title) are *proprietary*. In the modern and medievous civil law, the distinction is expressed by the contrasted terms *petitorium* (a proprietary suit) and *possessorium* (a possessory suit).

15. This duplication of remedies, with the resulting provisional protection of possession, has its beginnings in Roman Law. It became part of the Canon Law, where it received considerable extension, and through the common law it became a prominent feature of medieval Jurisprudence. It is a part of modern continental systems; but although well known to the earlier law of England, it has been long since rejected in England as cumbrous and unnecessary.

16. Reason why some legal systems recognize possessory

suit as distinct from proprietary suits is that evils of violent self help are deemed serious and therefore are discouraged. It is also based on the recognized principle of law that no one has a right to become a judge in his own cause. Civil society recognizes that where law recognizes a right and provides for a remedy to protect the right, the right has to be protected only as per the remedy provided by law.

17. Extended to the extreme it would mean: *he who helps himself by force even to that which is his own must restore it even to the thief and recover the same as per a recognized legal procedure*.

18. Section 6 of the Specific Relief Act 1963 is a statutory recognition of possessory suits as distinct from proprietary suits. It reads as under :-

> "6. **Suit by person dispossessed of immovable property**-
>
> (1) If any person is dispossessed without his consent of immovable property otherwise than in due course of law, he or any person claiming through him may, by suit, recover possession thereof, notwithstanding any other title that may be set up in such suit.
>
> (2) No suit under this section shall be brought-
>
> (a) after the expiry of six months from the date of dispossession; or
> (b) against the Government.
>
> (3) No appeal shall lie from any order or decree passed in any suit instituted under this section, nor shall any review of any such order or decree be allowed.
>
> (4) Nothing in this section shall bar any person from suing to establish his title to such property and to recover possession thereof."

19. The Section recognizes a right of a person possessed of immovable property to recover possession thereof if dispossessed without his consent or otherwise than in due course of law.

20. What does the phrase 'due course of law' mean. As explained in the report published 1992 SUPP (2) SCC 29 *East India Hotels Ltd. Vs. Syndicate Bank* (Para 30):-

> "30. What is meant by due course of law? Due course of law in each particular case means such an exercise of the powers by duly constituted tribunal or court in accordance with the procedure establish ed by law under such safeguards for the protection of individual rights. A course of legal proceedings according to the rules and principles which have been established in our system of jurisprudence for the enforcement and protection of private rights. To give such proceedings any validity, there must thus be a tribunal competent by its constitution, there is by law of its creation, to pass upon the subject matter of the suit or proceeding; and, if that involves merely a determination of the personal liability of the defendant, it must be brought within its jurisdiction by service of process within the State, or his voluntary appearance. Due course of law implies the right of the person affected thereby to be present before the tribunal which pronounces judgment upon the question of life, liberty or property in its most comprehensive sense; to be heard, by testimony or otherwise, and to have the right determination of the controversy by proof, every material fact which bears on the question of fact or liability be conclusively proved or presumed against him. This is the meaning of due course of law in a comprehensive sense."

21. But as I see it, the real problem lies where a person openly proclaims: *Yes I am a trespasser, yes I admit that I wrongfully took possession of the property, but because I have continued to be in possession thereof over a sufficiently long period of time, my possession is a settled possession. It has given to me an enforceable right. Since I was dispossessed by force, please restore my possession.*

22. Position of a person who lawfully enters upon possession is different than he who gains possession in an unlawful manner. The

former would not be a trespasser. The latter would be. When right of the former to continue in possession is extinguished by law or by contract, continued possession is not akin to the possession of a trespasser. The possession, if original entry was under a lease would be that of a tenant at sufferance. If initial possession was permissive, possession would be simple at sufferance. Possession of a person who lawfully enters upon a property but retains it beyond the terms of the grant is treated as a juridical possession.

23. Does Section 6 of the Specific Relief Act 1963 equate possession of a trespasser whose very entry is unlawful at par with the possession of a person who otherwise lawfully enters upon the property, with consent of the owner, but asserts a right to continue in possession after the agreed period during which he was to retain possession has expired?

24. A peep into the legal precedents show a fairly hazy picture.

25. The fore runner of Section 6 of the Specific Relief Act 1963 was Section 9 of the Specific Relief Act 1877. It was the subject matter of discussion in various decisions.

26. In the report published as (1911) 13 Bom. LR. 1200 *Hillava Subbava Vs. Narayanappa* it was observed:-

> "No doubt, the true owner of property is entitled to retain possession, even though he has obtained it from a trespasser by force or other unlawful means: *Lillu Vs. Annaji* (1881) ILR. 5 Bom. 387 and *Bandu Vs. Naba* (1890) ILR. 15 Bom. 238."

27. Speaking through to Chagla C.J., a Division Bench of the Bombay High Court, in the decision reported as AIR 1954 Bom. 358 *Brig. K.K.Verma & Anr. Vs. UOI & Anr.* opined as under:-

> "The statement of the law just referred to in Hill and Redman on Landlord and Tenant would rather go to show that in every case a landlord must express his intention by some act which is

subsequent to the termination of the ,tenancy. and the reason for that seems to be clear because after the termination of the tenancy, – however the tenancy may be terminated, - there is as it were a neutral position created. The landlord may consent to the tenant continuing, may accept rent from him, in which case the tenant would become a tenant at will. He may, on the other hand, make it clear that he does not want the tenant to continue in possession in which case the tenancy on sufferance which was created by the termination of the tenancy would cease and the tenant would become a trespasser.

But, in our opinion, the position in English law is unnecessary to be considered because, as we shall presently point out, the law in India is essentially different, and even assuming Mr. Desai is right that under the English law on the facts of this case the tenant became a trespasser, the same position would not arise under the Indian law. Under the Indian law, the possession of a tenant who has ceased to be a tenant is protected by law. Although he may not have a right to continue in possession after the termination of the tenancy, his possession is juridical and that possession is protected by statute. Under Section 9 of the Specific Relief Act, a tenant who has ceased to be a tenant may sue for possession against his landlord if the landlord deprives him of possession otherwise than in due course of law, <u>but a trespasser who has been thrown out of possession cannot go to Court under Section 9 and claim possession against the true owner.</u>

<u>Therefore, our law makes a clear and sharp distinction between a trespasser and an erstwhile tenant. Whereas the trespasser's possession is never juridical and never protected by law, the possession of an erstwhile tenant is juridical and is protected by law.</u> Therefore, as far as the Indian law is concerned, an erstwhile tenant can never become a trespasser. It may or may not be that in English law in certain circumstances he can become a trespasser and it does seem that the landlord can enter the premises and deprive the erstwhile tenant of his possession, but in India a landlord can only eject his erstwhile tenant by recourse to law and by obtaining a decree for ejectment. ”
<u>(underlining emphasized)</u>

28. In the report published as AIR 1968 SC 620 <u>*Lallu Yeshwant Singh Vs. Rao Jagdish Singh & Ors.*</u>, in para 11 of the report, 2nd passage above quoted from the decision of Chagla C.J. in

K.K.Verma's case was noted and approval accorded in para 15 of the decision by recording as under:-

> "In our opinion, the law on this point has been correctly stated by the Privy Counsel, by Chagla C.J. and by the full Bench of the Allahabad High Court, in the cases cited above."

29. However, I may hasten to add that in the decision in *Lallu Yeshwant Singh's* case, the Supreme Court observed that law respects possession even if there is no title to support it.

30. On facts, the Supreme Court was dealing with a dispute between the plaintiff and the defendant pertaining to a Land Tenancy Act where the plaintiffs claim to be inducted as Sairda – Khillkar Cultivators and alleged forcible dispossession. The defendant pleaded that the right in favour of the plaintiff having ceased as per law, defendant was entitled to regain possession. The Board of Revenue took a view that possession of the tenant whose right has been so extinguished is not put to an end automatically and the land owner must be regain possession by following the procedure prescribed by the Tenancy Act. The High Court took a contra view, holding that the tenant could protect only lawful possession. The Supreme Court reversed the view taken by the High Court and restored the decision of the Board of Revenue.

31. Though without a detailed legal discussion, much less drawing a distinction between possession of a trespasser whose very entry was unlawful viz-a-viz right to continue in possession by a person whose initial entry was lawful but dispute was on right to continue in possession, a learned Single Judge of the Allahabad High Court, in the report published as AIR 1960 Allahabad 227 *Anant Bahadur Singh Vs. Ashtbhuja Baks Singh* held that where a person entitled to possession based on title regains possession, but by peaceful means, from a person not entitled to possession, the latter

cannot recover possession on basis of mere possessory title.

32. The facts were that a widow transferred possession of property which had devolved through her husband and as per Hindu Law she had no right to alienate the same. She had a limited right to possess the property during her life time. Corpus vested in the reversioners. On her death, the reversioners of the husband took peaceful possession. The alienee brought an action for recovery of possession based on possessory title. It was observed:-

> "In the present case, the defendants did dispossess the plaintiff peacefully. Now that the rightful owners are in possession, the plaintiff, who has no title in the property, cannot obtain the aid of court to dispossess the rightful owners."

33. Though not dealing with an issue directly relating to Section 6 of the Specific Relief Act 1963, jural concepts evolved in the decision reported as AIR 1974 SC 104 *M.C.Chockalingam & Ors. Vmanickavasagam & Ors*. give good guidance to understand the concept of lawful, legal and juridical possession. The Supreme Court was dealing with the claim of a lessee, whose lease had expired, to obtain a license to operate a cinema hall on the leased premises under the Madras Cinemas (Regulation) Act 1955. The rules framed thereunder, in particular Rule 13, viz-a-viz non owner occupants of a site required lawful possession of the applicant. It was urged by the lessee that notwithstanding lease having expired and the landlord having not consented to the continued occupation, till lessee was evicted by due process of law, his possession was lawful as also legal and therefore he was entitled to the requisite license.

34. Noting the decision of Chagla C.J. in *K.K.Verma's* case (supra) as affirmed by the Supreme Court in *Lallu Yeshwant Singh's* case (supra), the Supreme Court held that lawful possession and juridical possessions are different concepts. A tenant holding over

without the consent of the landlord would be in juridical possession. His possession would not be lawful. Notwithstanding that the landlord could evict such tenant through the medium of a process recognized by law, possession of the tenant, post efflux of the lease period, was and could not be treated as lawful possession. It was held that he may not be a trespasser as conventionally understood and to that extent it may be said that the possession is legal, but in jural concept the possession would be treated as a juridical possession.

35. In para 13 of the report, ratio of *Lallu Yeshwant Singh's* case (supra) was explained with reference to Section 9 of the Specific Relief Act 1877, in that, said Section was held as protecting juridical possession. To quote, the Supreme Court stated as under:-

> "In *Lallu Yeshwant Singh's* case AIR 1968 SC 620 where this Court considered the possession of a tenant after expiry of the lease, as in this case, as a juridical possession in the context of a provision similar to S.9 of the Specific Relief Act."

36. Black's law dictionary, 4th Edition (page 990), defines juridical as follows:-

> "*Juridical: Relating to administration of justice or office of a Judge.*"

37. In the same dictionary (page 1032) the word "*lawful*" is defines as follows:-

> "*Lawful: Legal; warranted or authorized by the law; having the qualifications prescribed by law; not contrary to nor forbidden by the law.*"

38. Thus, lawful possession would mean a legal possession which is rightful or at least excusable and consistent with the superior right to possess in some other person i.e. the owner.

39. Decision of the Supreme Court reported as AIR 1996 SC

140 *R.V.Bhupal Prasad Vs. State of A.P.* highlights the applicability of the concept of a legal/lawful or juridical possession.

40. The Supreme Court referred to and explained its earlier decisions in *Lallu Yeshwant Singh's* case and *M.C.Chockalingam's* case.

41. In *R.V.Bhupal Prasad's case* the Supreme Court was dealing with a right to have a license renewed under the A.P. Cinemas (Regulation) Act 1955. In para 8 it was noted that a tenant who continues in possession after the expiry of a lease, though referred to as a tenant holding over, actually is a tenant at sufferance but where the landlord consents to the continued retention of possession, the tenant is holding possession under a tenancy at will. It was held that the possession under the former category would not be a lawful possession but would be a juridical possession. In para 9, with reference to its decision in *M.C.Chockalingam's* case meaning of the expression lawful possession was explained in the following words:-

> "..... Lawful possession is not litigious possession and must have some foundation in a legal right to possess the property which cannot be equated with a temporary right to enforce recovery of the property in case a person is wrongfully or forcibly dispossess from it. ..... We are clearly of opinion that juridical possession is possession protected by law against wrongful dispossession but cannot per-se always be equated with lawful possession. ..... Lawful possession means legal possession which is also rightful or at least excusable. Thus that which is not stricto legalo may yet be lawful. It should not be forbidden by law. ..... Lawful is wider in connotation than legal."

42. However, I would be failing if do not note that in para 11 of the report, the Supreme Court has noted that even a trespasser would be entitled to be evicted by a due process of law.

43. There are two maxims of law which need to be noted.

First: *adversus extraneous vitiose possessio prodesse solet* – prior possession is a good title of ownership against all who cannot show a better title. Second: *possessio contra omnes valat praeter eur cui ius sit possessionis* – he that hath possession hath right against all but him that hath the very right.

44. If the 2 maxims are strictly applied, no possession can be protected without a right to possess against the owner of the property in whom law recognizes the right to possess.

45. However the maxim: *nemo debet esse judex in propria causa* – no one should be judged in his own cause, is also recognized by law and this maxim is the foundation against permitting the owner to regain possession of his property without the aid of a court or a tribunal established by law i.e. compels the owner to regain possession in the manner prescribed by law.

46. Indeed, if people are allowed to be the judge of their own cause, there would be lawlessness in the society. More often than not there are competing claims. More often than not a party asserts no right in the occupier who affirms a right in himself. The two must have the dispute resolved from the court of competent jurisdiction.

47. There are wheels and wheels within the laws. Niceties, caveats, exceptions to the rule and rules within rules have unfortunately become a part of every legal system.

48. Whatsoever and howsoever may be the theories of law, the common man understands law by instinct. His instinct guides him that whatever is rational and fair is lawful and anything which is irrational or oppressive is unlawful. But, more often than not, law is discovered in a court room through forensic battles fought at length by legal luminaries. On many an occasion, after hearing arguments, a Judge goes into legal transcendental meditations to unfathom the

niceties of the law.

49. Instinct and commonsense would guide that where a man trespasses into somebody's property and proclaims no right to possess the property and states that I am a trespasser but please go to court to regain possession, such a claim cannot be countenanced inasmuch as it would protect a wrongdoer.

50. After all, possession may prima facie raise a presumption of a title, but when the facts are known, where is the place for a presumption? I wonder!

51. It could be urged that regaining lost possession, albeit, without creating a law and order problem and without resorting to violence, prima facie, from a commonsense point of view would not amount to taking advantage under an illegal action.

52. From a moralist point of view, why should a court come to the aid of a person who founds his cause of action upon an immoral or illegal act of his. The maxim *ex dolo malo non oritur actio* means: a right of action does not arise out of fraud. No court will lend its aid to a man who founds his cause of action on an illegal act. As observed by Lord Mansfield C.J. in *Holman Vs. Johnson* (1775) 1 Cowper 341:-

> "If, from the plaintiff's own stating or otherwise the cause of action appears to arise exturpicausa or the transgression or a positive law or this country, there the court says he has no right to be assisted. It is upon that ground the court goes; not for the sake of the defendant, but because they will not lend their aid to such a plaintiff."

53. Courts in India have struck a middle path. Where possession of a trespasser assumes the status of a settled possession, it is protected against forcible ejectment by even the true owner. The guiding principle of this middle approach is the observations of Lord Macnaghten in the celebrated decision of the

Judicial Committee reported as 1907 AC 73 *Perry Vs. Clissold* wherein the principle was stated as follows:-

> "It cannot be disputed that a person in possession of land in the assumed character of owner and exercising peaceably the ordinary rights of ownership has a perfectly good title against all the world but the rightful owner. And if the rightful owner does not come forward and assert his title by the process of law within the period prescribed by the provisions of the statute of Limitation applicable to the case, his right is for ever extinguished, and the possessory owner acquires an absolute title."

54. Without expressly authorizing a person to occupy one's property and lose the right to possess the same, an owner may by his action, inaction or deeds do something which would be treated as acquiescence by the owner, resulting in the person entering into possession acquiring settled possession.

55. In the report published as 1 (2004) SLT 675 *Rame Gowda Vs. M.Varadappa Naidu*, recognizing the right of a owner who has been wrongly dispossessed of property to regain possession, if he can do so, peacefully and without the use of unreasonable force, only limitation placed was when the trespasser acquires effective possession or settled possession. In para 11 of the report it was observed that the sine qua non for settled possession or effective possession of a trespasser was when the same extended over a sufficiently long period of time and acquiesced to by the true owner. In relation to the concept of settled possession developed by various judicial pronouncements, noting the same in para 11 of the report, it was observed that the phrase "settled possession" does not carry any special charm or magic, nor is it a ritualistic formula which can be confined in a straight jacket. However, following tests which could be adopted as working rules were evolved:-

> "(i) That the trespasser must be in actual physical possession of the property over a sufficiently long period;

(ii) That the possession must be to the knowledge (either express of implied) of the owner or without any attempt at concealment by the trespasser and which contains an element of animus possidendi. The nature of possession of the trespasser would, however, be a matter to be decided on the facts and circumstances of each case;

(iii) The process of dispossession of the true owner by the trespasser must be complete and final and must be acquiesced to by the true owner; and

(iv) That one of the usual tests to determine the equality of settled possession, in the case of culturable land, would be whether or not the trespasser, after having taken possession, had grown any crop. If the crop had been grown by the trespasser, then even the true owner has no right to destroy the crop grown by the trespasser and take forcible possession."

56. A deceitful, undercover or a trespass shrouded under darkness of secrecy; not to the knowledge, express or implied of the owner, howsoever long may be the duration of the possession would not amount to a settled possession. The reason for the law is that where a person knowingly permits another to take possession of his property and deal with the same he may encourage the trespasser to improve upon the property i.e. permit the trespasser to spend his time, money or energy on the property. Having encouraged the trespasser to do so, the owner would be precluded i.e. estopped from alleging that the trespasser has no right whatsoever in the property.

57. To put it differently, where the owner permits a trespasser to go into settled possession he permits the status of the possession of the trespasser acquiring the status akin to that of a juridical possession. Thus, juridical possession or possession akin thereto in any case becomes the sine qua non for an action to be maintainable under Section 6 of the Specific Relief Act 1963.

58. It would therefore be wrong to state that every

trespasser has a right to retain possession till evicted by a due process of law. If that was the legal position there would have been no need for courts to evolve the concepts of legal possession, lawful possession, juridical possession, settled possession etc.

59. In legal possession or lawful possession the possessor has a claim recognized by law to enjoy possession of a property. The entry upon the property and it's retention is with the consent or permission of the owner. In a case of juridical possession, the possessor asserts a legal right to possess and the facts on which the right is found is asserted have to be decided and since no one can be a judge in his own cause, the dispute has to be resolved by a lawful authority. But where a person asserts no right to possess a property but illegally holds on to it, nothing requires adjudication. The judicial forum has to be decide nothing, or to put it differently there is not even a semblance of a claim. There is nothing juridical which exists.

60. A perusal of the decisions under Section 6 of the Specific Relief Act 1963 and its forerunner, namely Section 9 of the Specific Relief Act 1877, reveal the fairly uselessness of providing a remedy of a suit based on a mere possessory right. As would be evident from the facts noted hereinafter and in particular pertaining to C.R. No. 193/2005 *Deep Chand Vs. Kulanand Lekhera*, the remedy under Section 6 is neither speedy nor effective because more often than not, evidence which is generally led to establish possession is the near same as would be required in a title suit.

61. Way back in the year 1958, the Law Commission under the chairmanship of Late M.C.Setalvad in the 9th Report of the Law Commission, dealing with the Specific Relief Act 1877 recommended deletion of Section 9. The report records that it was felt that the question of possession cannot be determined without going into the

question of title to some extent. Since a decree under Section 9 (now Section 6) does not determine title it was noted by the Law Commission that the same i.e. the decree was generally followed by a suit for recovery of possession based on title, thus resulting in multiplicity of proceedings.

62. On appreciating the growth of law on the subject as noted hereinabove, one realizes that though drafted in a manner which aims to cage its scope; but while defining the concepts of possession, legal possession, juridical possession, settled possession akin to juridical possession and rank trespass, the provision of law i.e. Section 6 of the Specific Relief Act 1963 has rendered nugatory the object of the Section, more so in view of the docket explosion in the courts in India. In para 10 of the decision in *R.V.Bhupal Prasad's* case (supra), it has been noted that long delay in disposal of cases has become a ruse to unscrupulous litigants to abuse the due course of law and remain in unjust or wrongful possession of property.

63. Time to enter the factual arena. Petitioner in C.R. No. 21/2002 filed a suit for possession against DDA invoking Section 6 of the Specific Relief Act 1963. He alleged that he purchased the suit property i.e. plot no. 41, Transport Nagar, Sabzi Mandi, Azad Pur, New Delhi for valuable consideration in the year 1978. He alleged that in the first week of June 1990, employees of DDA came to take possession by demolishing the structure raised by him. Attempt was repeated on 6.6.1993. It was alleged that he filed a suit for permanent injunction against DDA to restrain DDA from dispossessing him without authority of law. That, in the suit written statement filed by DDA disclosed that he was an unauthorized occupant. That on 21.6.1995 officers of DDA dispossessed him by force. Alleging that DDA did not initiate any legal proceedings for his

eviction much less obtained an eviction order, restoration of possession was prayed for.

64. In the written statement filed by DDA it was pleaded that the plot in question was put up for auction in the year 1978. Sh. Ishwar Singh, Sh. Surjit Singh and Sh. Manjit Singh were the highest bidders. Bid was confirmed. Bid confirmation letter was issued. They did not pay the premium as per bid confirmed. Therefore, possession of the plot was not handed over to them. No transfer document was executed. It was stated that the plaintiff was never put in possession of the plot. It was further stated that DDA never gave possession to any third party. Thus, assertion of the petitioner that he purchase the plot for valuable consideration was false.

65. In the replication, plaintiff asserted right on mere possession.

66. Without recording evidence the suit has been dismissed on the ground that the petitioner was neither in juridical nor legal possession of the property as per his pleadings. Additionally, it has been held that the suit was filed beyond six months of dispossession.

67. On the issue whether petitioner was dispossessed on a day/date six months prior to date of filing of the suit or within six months thereof, the view of the learned Judge cannot be sustained for the simple reason, no evidence was led and the suit was dismissed on the preliminary issue whether at all the suit was maintainable.

68. However, the suit must fail as drafted and I hold that the same is not maintainable for the reason there are no specific averments as to what constituted the acts of possession to the knowledge of the owner without any attempt at concealment by the petitioner. As noted hereinabove, the law is that for the trespasser

to claim juridical possession he must be in settled possession i.e. must satisfy the four working rules laid down by the Supreme Court in *Rame Gawda's case* (supra). The simple assertion that petitioner was in possession since 1978 is not enough to disclose a cause of action to maintain a suit under Section 6 of the Specific Relief Act 1963.

69. Every fact, if traversed by the defendant, which must be proved and established by the plaintiff constitutes the cause of action. Thus, the cause of action for a trespasser, to maintain an action under Section 6 of the Specific Relief Act must consists of averments in the plaint which, if traversed, on being proved by evidence establish and prove the four requirements of settled possession as explained in *Rame Gawda' case*.

70. Though issue of title is irrelevant, for record I may note that documents filed by the petitioner are evidencing a purchase of the plot from Sh. Ishwar Singh, Sh. Surjit Singh and Sh. Manjit Singh, the three persons who were the highest bidders but having failed to pay the premium to DDA failed to perfect their title qua the plot in question. The said three persons were never put in possession of the plot by DDA. The petitioner has not even pleaded a semblance of a claim as to how he entered into legal possession. Indeed, his counsel claimed: yes, I was in illegal possession but DDA had to evict me by following due process of law.

71. C.R.P. No. 21/2002 is accordingly dismissed.

72. Facts pertaining to C.R. No. 193/2005 are that the petitioner, Deep Chand, filed a suit alleging forcible dispossession by Kulanand Lekhera. The subject matter of the suit was property no. 398/3, Block B, Gali No. 19, Bhajan Pura, Delhi.

73. The colony Bhajan Pura is an unauthorized colony. Land

mafia took advantage of government apathy and on agricultural land, carved out residential plots later on sold to gullible buyers.

74. Petitioner pleaded that respondents 2 to 5 connived with Kulanand Lekhera, respondent no.1, to dispossess him from the suit property. He alleged that he purchased the same from one Hari Singh, impleaded as respondent no.6 (defendant no. 6 in the suit).

75. Defence set up by defendant no.1, Kulanand Lekhera was that there is no property by the number 398/3, B Block, Gali No.19, Bhajan Pura, Delhi. He stated that the property no. corresponding to the site plan filed by the plaintiff was numbered B-398, Gali No.19, Bhajan Pura, Delhi. He stated that he was in lawful possession thereof.

76. In a nut shell, in the context of the respective pleadings, the issue between the parties could not be decided without deciding whether there existed at site two properties or only one. The dispute, whether at all property no. 398/3, Block B, Gali No.19, Bhajan Pura existed at site and corresponded to the site plan filed required to be adjudicated. Per necessity, as per written statement filed by respondent no.1, it had to be decided whether the site plan in question related to property no. 398, Block B, Gali No.19, Bhajan Pura, Delhi.

77. Existence of properties has obviously to be decided with reference to the title documents.

78. The instant case highlights the pitfall inherent in an adjudication under Section 6 of the Specific Relief Act 1963. I would like to add a caveat. 2/3rd population of Delhi is residing in such kind of unauthorized colonies. There are no approved lay out plans. As in the instant case, documents of title are unregistered agreements to sell and a power of attorney. It is a nightmare to identify 100 sq.

yards to 150 sq. yards of land in these densely populated areas. In the instant case, the land comprised is 100 sq. yds. As per the parties, it was carved out of land comprised in khasra no. 321 of Village Ghonda Gujran Khadar, Illaqa Shahdara.

79. In Delhi, land comprised in a khasra generally ad-measures 4 bigha and 16 biswa i.e. 4880 sq. yds. With gross unauthorized colonization, the permanent points of most of the villages have been destroyed. It is impossible to demarcate the original khasras. If original khasra cannot be demarcated, who possibly can demarcate 100 sq. yard land comprised in a khasra. Further, which part of the khasra stands bifurcated resulting in 100 sq. yd. Land being carved out. Since everything was done illegally, the revenue officials have not cut the titama at site, much less reflect the same on the revenue map of the village.

80. Unauthorized colonization in Delhi and disputes relating to possession of plots therein are virtually crippling civil courts at the district (junior division) level in Delhi. Nobody has any clue as to how a dispute pertaining to identity of a plot can be decided.

81. As in the instant dispute, where two parties allege with reference to 2 different numbers that the site in question belongs to them, I can think of no satisfactory solution other than to prepare the shajra of the entire revenue estate at the same scale as per the lay out plan of the illegal colony and thereafter super impose the latter on to the former to identify as to which plot falls at which part of the revenue estate. But this would require the availability of an authentic copy of the approved lay out plan of the colony. Unfortunately, none exists.

82. Reverting back to the facts, in the written statement filed by respondent no. 6, he denied having sold any land to the

petitioner. He stated that the petitioner told him that he needed to raise a loan for which he required documents of title for some land. Since he i.e. respondent no.6 had good relations with the plaintiff, he obliged the plaintiff by executing whatever documents were got prepared by the plaintiff.

83. The documents I note are a registered power of attorney, a cash receipt evidencing consideration of Rs.1 lac in cash passing between the petitioner and respondent no.6, an affidavit dated 20th March 1997 recording delivery of possession and an agreement to sell of even date.

84. Non suiting the petitioner who alleged unlawful dispossession by respondent no.1 with the connivance of respondent 2 to 5 on 13.4.1997, learned Judge has opined that the petitioner had failed to prove that he took delivery of possession of the suit property on 20.3.1997. The learned Judge has noted that the petitioner failed to even prove that he had Rs.1 lac with him i.e. the money ostensibly paid at the time of purchase of the property.

85. In his testimony, petitioner stated that he had purchased only a part of property no. 398/3, Block B, Gali No. 19, Bhajan Pura and that the remaining part thereof was in occupation of defendant no.1.

86. The learned Judge has additionally noted that the plaintiff failed to even prove the site plan inasmuch as he had not produced as witness the person who had prepared the site plan.

87. Three reasons are forthcoming from the decision dated 7.3.2005. The first is that the petitioner had failed to prove that he had paid Rs.1 lac to respondent no.6. That he had failed to prove possession of the property being delivered to him on 20.3.1997 and lastly he had failed to prove even the site plan.

88. Scope of challenge in a revision petition is limited. Petitioner cannot call upon this court to reappreciate the evidence.

89. I may only add that the petitioner has failed to establish the very existence of a property by the number 398/3, Block B, Gali No. 9, Bhajan Pura. In the teeth of the defence set up by respondent no.1 and the statement made by the petitioner in evidence that he had purchased only a part of the property, remaining being with respondent no.1, it was encumbant upon the petitioner to prove with clarity the existence of two properties. The one he admitted to be in possession of respondent no.1 and the other on which he pleaded trespass by respondent no.1. He has failed to do so. The inevitable consequences have to flow. C.R. No. 193/2005 is accordingly dismissed.

90. Pertaining to C.R.No.593/2003 facts are that Om Singh, since deceased, now litigating through his sons claimed to be in possession of 1 bigha and 10 biswa land comprised in a part of land of Khasra No.428/309, village Babarpur. He claimed possession thereof prior to 1954 i.e. the year when Delhi Land Reforms Act 1954 was promulgated in the Union Territory of Delhi. He claimed illegal dispossession from the land by the Municipal Corporation of Delhi on 3.4.1995. Prayer made in the suit was for possession being restored.

91. M.C.D. pleaded that the land in question together with adjacent land belonged to the Gaon Sabha of the village who gifted the same to a school in the year 1952, which school was taken over by the MCD when it was formed under the DMC Act 1957. It was alleged that petitioner trespassed into the suit land in the year 1973. Proceedings were initiated for his eviction under Section 86A of the Delhi Land Reforms Act 1954. Ejectment order was passed which attained finality. Proceedings were initiated simultaneously i.e in the

year 1973 under Section 145 Cr. P.C. The same resulted in a reference being made under Section 146 (1) Cr.P.C. to a sub-Judge Delhi, who decided issue of being in possession in favour of the petitioner. It was stated that the pradhan of the village being related to the petitioner did not challenge the order dated 12.10.1978 passed by the learned Civil Judge Delhi and as a result possession was restored to the petitioner. It was stated that in between, property remained attached. It was further pleaded that in the interregnum, petitioner challenged the ejectment order passed against him by the revenue assistant by way of a revision petition which was dismissed. That on 12.12.1975, petitioner filed a suit for declaration that the orders passed by the revenue authorities were without jurisdiction. Interim injunction was prayed for. Same was declined. Appeal was filed, which was dismissed. That petitioner filed a civil revision petition in the Delhi High Court challenging the non grant of interim injunction and managed an ex-parte order in his favour which was vacated when the civil revision was dismissed on 6.7.1988. Thereafter, petitioner challenged, albeit belatedly with a delay of 2728 days, the decision by the financial commissioner upholding the ejectment order by way of a Petition For Special Leave To Appeal No.398/1989 before the Supreme Court which was ultimately withdrawn.

92. In effect, MCD pleaded that petitioner never went into settled possession. His trespass in 1973 was countered at 2 levels, firstly by proceeding under Section 145 Cr.P.C. and secondly by obtaining an ejectment order under Section 86A of the Delhi Land Reforms Act 1954. That petitioner managed to hold on to his illegal entry by resorting to filing of a suit and obtaining interim orders which were ultimately vacated at each level but resulted in

extending the trespass.

93. Vide impugned order dated 12.3.2003, learned Civil Judge has held that relief under Section 6 of the Specific Relief Act 1963 can be granted to a person who has a legal right to possess the suit property and since petitioner had none, suit had to be dismissed.

94. Mr. S.K.Puri, learned senior counsel for the petitioners challenged said fining and urged that the learned civil Judge has acted with patent illegality and has failed to exercise jurisdiction vested in him by law by proceeding on an erroneous legal view.

95. The proposition of law as stated by the learned civil Judge is too wide, but notwithstanding the same, the suit has to be dismissed for the reason, when disposed on 3.4.1995, petitioner was not in settled possession. He entered upon illegal possession in the year 1973. When challenged, he restored to multifarious litigation to hold on to his possession. Period between 1973 to 1995 was of litigation. Thus possession would be litigious possession.

96. Sh. S.K.Puri, learned senior counsel for the petitioner urged that khasra Girdawri's for the land show petitioner's possession much prior to 1973.

97. The said entries were adversely commented by the Revenue Assistant in his order dated 28.6.1974 deciding proceedings under Section 86A of the Delhi Land Reforms Act 1954 and ordering ejectment of the petitioner. Relevant extract of the order reads as under:-

> “...it is clear that the adverse possession of the respondent was shown by the patwari for the first time in kharif, 1966. Similar entry made in the khasra girdawari for the year 1967-68 was struck off by the Kanugo after noticed that on the site, the respondent was not in possession of the land. Similar entry made in the khasra girdawari for the year 1969-70 was also struck off by the Kanugo. It is, thus, evident that the entry made in the year

> 1966-67 was a collusive entry especially when no form P.S. was issued and implemented as required under the rules. Moreover, the halqa patwari seems to have gone out of the way in manipulating the revenue record in favour of the respondent once by showing his possession over 1 bigha 16 biswas in the khasra girdawari for the year 1969-70. It was only the vigilance of the Kanugo which was responsible for nullfying nefarious activities of the patwari by way of bringing about the correct facts on the revenue records for the subsequent fasals. I am thus of the considered opinion that the respondent has not succeeded in establishing his claim that he was in possession of the land in dispute in the year 1966-67. In the subsequent khasra girdawaries the adverse possession of the respondent has not been shown in the remarks column.
>
> ...I am of the view that the witnesses produced by him are not reliable. From the revenue records, it is clearly established that the land in dispute forms part of the Gaon Sabha property falling in Khasra No.428/309. All the three witnesses produced by the respondent have stated that the land in dispute is not Gaon Sabha land. This shows that they are denying the truth purposefully to help out the respondent. Moreover, in the face of the revenue records and the statement of revenue officials, oral evidence, which can be easily managed by an interest party has no value."

98. As noted above, said order had attained finality in as much petitioner's revision petition failed before the Financial Commissioner.

99. Following dates may be noted:

A. 2.9.1973 ..... Kalandra filed under Section 145 Cr. P.C. as Gaon Sabha and MCD alleged recent trespass by petitioner who asserted possession prior to 1954.

B. 28.9.1973 ..... Land attached by the S.D.M.

C. 1973 (exact date non known) ..... Proceedings for ejectment of petitioner initiated under Section 86A of the Delhi Land Reforms Act 1954.

D. 28.6.1974 ..... Decree for ejectment passed by the revenue assistant.

E. 29.9.1974 ..... Assistant Collector affirmed order dated

28.6.1974 passed by the revenue assistant.

F. 1975 (Date not known) ..... Financial Commissioner uphold ejectment order.

G. 12.12.1975 ..... Petitioner filed a civil suit for declaration that orders passed by the revenue authorities are without jurisdiction. Decree for permanent injunction was prayed for. Pendente lite injunction was sought.

H. Date not known ..... Ex-parte injunction granted was vacated by learned sub-Judge.

I. 12.10.1978 ..... Possession restored to petitioner pursuant to order dated 12.10.1978 passed by sub Judge Delhi on reference made to him under Section 146 (1) Cr. P.C.

J. 6.6.1979 ..... Warrant of possession issued to implement the ejectment order.

K. 4.8.1979 ..... Appeal against warrant of possession dated 6.6.1978 filed by petitioner dismissed by the Additional Collector.

..... However warrants could not be enforced due to interim order obtained in the suit filed by petitioner.

L. 6.8.1980 ..... M.C.A. No.9/1980 filed by petitioner challenging order passed by learned sub Judge Delhi, vacating interim injunction dismissed.

M. 1980 ..... C.R.No. 1058/80 filed in this court challenging order dated 6.8.1980. Ex-parte stay obtained.

N. 6.7.1988 ..... C.R.No.1058/80 dismissed.

O. 1989 ..... Petition for Special Leave to Appeal filed against order dated 6.7.1988 and stay obtained.

P. Date not known ..... Above reformed SLP dismissed as withdrawn.

Q. Date not known ..... Suit for declaration and injunction

dismissed for default and not restored.

R. 1989 ..... Belated SLP No.398/89 filed challenging order passed by the Financial Commission uphold ejectment order. Interim stay obtained.

S. Date not known ..... SLC (C) No. 398/89 dismissed.

100. There is no need nor requirement to discuss the evidence of possession between 1973 till 1995 for the reason petitioner managed to retain the same under strength of interim orders passed in various proceedings initiated by him.

101. Evidence establishes a trespass in the year 1973. Evidence of possession prior thereto has been held to be tainted and in connivance with the patwari as per order dated 28.6.1974 passed by the Revenue Assistant. Said order has attained finality. Petitioner managed to retain possession under strength of interim orders. Ejectment proceedings under the Delhi Land Reforms Act 1954 have attained finality, but warrant of possession could not be executed as petitioner had an interim stay in the suit. the said suit has since been dismissed. The multifarious proceedings initiated by the petitioner came to an end in the year 1995 and thereafter, M.C.D. took possession.

102. Petitioner cannot take advantage of his possession between 1973 till 1995 as the same was on the strength of interim orders attained from time to time in various proceedings. As of 1973, his possession was unsettled because he was challenged the moment he trespassed into the property. MCD could have resisted the trespass by use of even reasonable force. Act of re-entry by MCD would have been lawful. I repeat litigious possession cannot create settled possession.

103. Having lost the battle before the revenue authorities and

civil suit being dismissed, albeit in default, petitioner has no case at all. Ejectment order has attained finality.

104. Civil Revision No.593/03 is accordingly dismissed.

105. Though order impugned in C.R. No.698/2003 has to be upheld. However, due to change in circumstances noted hereinafter, the revision petition has to be allowed.

106. By and under the impugned order dated 30.4.2003, suit filed by the plaintiffs, impleaded as respondents in the revision petition, has been decreed holding that they were in possession of the suit property six months prior to the date of the suit being filed, and were dispossessed therefrom by the petitioners without following the due process of law.

107. Bishambar Dayal, since deceased and now represented by his wife and daughter, Suraj Prakash and Jijji joined as co plaintiffs to seek a decree of possession against the petitioners. They pleaded ownership of plot no.178, comprised in khasra no.256/4, in the revenue estate of village Mandaoli. They pleaded that the plot was situated in a colony called Chander Vihar. According to them the land ad-measured 200 square yards. They further pleaded that Bishambar Dayal had purchased 80 square yards of land and Suraj Prakash and Jijji had purchased 60 square yards each.

108. It may be noted at the outset that which part of the plot comprising 80 square yards, 60 square yards and 60 square yards respectively was purchased by them, was not stated.

109. They stated that they were illegally dispossessed by the defendants on 26.8.90.

110. Defendants stated that the land comprised in plot no.178 ad-measured 180 square yards and belonged to one Sh. Bhagwat Singh. They pleaded having purchased 90 square yards each from

Sh. Bhagwat Singh. They further pleaded that Jijji was married to the sister of the defendants and due to financial difficulties was allowed to carry on dairy business from the land. They further pleaded that on the death of their sister, Jijji remarried and voluntarily surrendered possession of the property.

111. In his deposition, Bishambar, examined as PW-1, stated that he purchased 80 square yards of land from one Ramesh Chander by and under the agreement to sell and a power of attorney, proved as Ex. P-2 and P-1 respectively. He stated that he rented out his portion to plaintiff no.2 i.e. Suraj Prakash. He stated that Suraj and Jijji were running a dairy from the land.

112. Jijji appeared as PW-2 and stated that he and Suraj Prakash purchased 60 square yards of land each vide agreement to sell, power of attorney, receipt, affidavit and a will Ex.PW-2/1 to PW-2/5. He stated that he was in possession of the entire plot.

113. Suraj Prakash appeared as PW-5 and likewise proved title documents in his favour namely will, power of attorney, agreement to sell, affidavit and a receipt.

114. Defendants examined themselves as their witness and proved their title documents, namely general power of attorney, agreement to sell and a receipt.

115. Whereas plaintiffs led evidence pertaining to an electricity connection obtained by them qua the suit land, defendants led evidence pertaining to the house tax record maintained by the Municipal Corporation of Delhi for the suit property.

116. Learned Judge has correctly held that issue of title could not be gone into in a suit under Section 6 of the Specific Relief Act.

117. On the issue of possession, analyzing the evidence, a finding has been returned in favour of the plaintiffs.

118. Dispute pertaining to title has to be got adjudicated at a regular trial where the cause of action pleaded is the title. However, the petition has to be allowed for the reason, vide CM No.3085/2006 which was disposed of on 10.10.2006, a settlement between the petitioner i.e. defendants of the suit and respondents 2 & 3 i.e plaintiffs 2 & 3 of the suit was recorded to the effect that respondents 2 & 3 claim no right title or interest in the suit property.

119. The effect of the compromise is that as of today, petitioners would admittedly have a right title and interest in 120 out of 200 square yards of land. This would include a possessory right. As noted hereinabove, in his deposition, Bishambar, predecessor in interest of respondents 1A and 1B admitted that Suraj Prakash was in possession of the entire plot inasmuch as he stated that he had let out his share of 80 square yards land comprised in the plot to Suraj Prakash. As noted hereinabove, which part of land ad-measuring 80 square yards out of the total plot ad-measuring 120 square yards was purchased by Bishambar was neither disclosed by him in his testimony, nor the same can be segregated from the sale documents relied upon by Bishambar.

120. Ex. P-2, agreement to sell relied upon by Bishambar nor any other document relied upon by him segregates 80 square yards of land comprised in the plot in question, which as noted hereinabove ad-measures 200 square yards.

121. Since plaintiffs 2 and 3 have compromised the dispute with the petitioners herein, qua them, the decree must suffer a reversal. Qua Bishambar, since 80 square yards of land allegedly owned by him cannot be segregated as boundaries thereof have not been determined, the decree cannot be severed. I may additionally note that according to Bishambar, he had handed over possession of

80 square yards land purchased by him to Suraj Prakash who according to Bishambar was his tenant. The effect of the compromise between Suraj Prakash and Jijji on one side and the petitioners on the other is that Suraj Prakash recognizes the surrender of possession in favour of the petitioners.

122. Qua Bishambar, it would thus be a case of a tenant wrongfully handing over possession of the tenanted premises to a third party. This would be the position if the stand of the Bishambar qua ownership of 80 square yards land has to be accepted. Therefore, Bishambar has to regain possession in a properly constituted suit, taking into account the compromise between plaintiffs 2 & 3 and the petitioners herein.

123. CR. No. 698/2003 is accordingly allowed. Impugned judgment and decree dated 30.4.2003 passed by Ms. Illa Rawat, Civil Judge, Delhi in suit no.117/2002 is set aside.

124. There shall be no order as to costs in any of the revision petition disposed of by this common order.

125. Trial court record be returned.

April 17, 2004 (PRADEEP NANDRAJOG)
mm JUDGE